

FILED

JUL - 9 2014

UNITED STATES BANKRUPTCY COURT  
EASTERN DISTRICT OF CALIFORNIAUNITED STATES BANKRUPTCY COURT  
EASTERN DISTRICT OF CALIFORNIA

In re:	)	Case No. 13-22346-C-7
	)	
J. PEDRO ZARATE,	)	DC No. HCS-2
	)	
	)	
Debtor(s).	)	

ORDER ON CHAPTER 7 TRUSTEE GEOFFREY RICHARDS'  
MOTION TO COMPROMISE CONTROVERSY

This is a contested motion to compromise controversy that has been the subject of prior hearings. This court previously took the matter as submitted and then restored it to calendar because the court was uncertain about whether the debtor had been treated fairly. Accordingly, it authorized a resolution advocate to meet with the parties pursuant to this court's Bankruptcy Dispute Resolution Program. Thereafter, judicial mediation was ordered and was conducted by the Honorable Ronald Sargis.

The debtor has been advised on multiple occasions, including most recently by Judge Sargis on June 24, 2014, that he needs to come forth with facts and evidence to support facts that demonstrate that there is more merit to his contentions than heretofore has appeared.

This court gave Mr. Zarate until 10:00 a.m. on Thursday, July 3, 2014, one last chance to present information to the trustee. Mr. Zarate did send the trustee additional emails along

1 with copies of loan and foreclosure documents, so the court once  
2 again restored the matter to calendar and set a hearing for July  
3 8, 2014. At the hearing, the trustee reiterated his position  
4 that the settlement with the bank was in the best interest of  
5 creditors.

6 The court will now return to the question whether the  
7 compromise is fair and equitable taking into account the  
8 probability of success in litigation, difficulties, if any, to be  
9 encountered in the matter of collection, complexity of  
10 litigation, the expense, inconvenience, and delay necessarily  
11 attending it, and the interests of creditors that express a view.

12 As to probability of success, the probability of success  
13 appears to be low. Mr. Zarate has repeatedly been asked for  
14 evidence to back up his contentions regarding this \$85,750  
15 commercial loan. The evidence has not been forthcoming. What  
16 has been forthcoming are technical assertions that Mr. Zarate was  
17 not represented by a broker and that his spouse was not party to  
18 the loan. The bank has presented information that goes beyond  
19 those assertions and other assertions made by Mr. Zarate. Thus,  
20 there are questions of fact that would need to be resolved.

21 Since it is a lender liability situation, the litigation  
22 would be complex and the outcome uncertain. The offer to the  
23 trustee of \$20,000 appears likely to exceed the net amount that  
24 could be achieved in litigation when probability of success is  
25 applied against theoretical liability to establish expected  
26 liability.

1 Expense, inconvenience, and delay are manifest. Litigation  
2 would be costly, fact-specific, and consume a considerable amount  
3 of time.

4 Collectibility does not appear to be a factor in that if the  
5 bank were held liable, the bank is sufficiently solvent to pay  
6 any judgment.

7 Finally, no creditor has opposed the compromise. Creditors  
8 stand to receive some small dividend if the compromise is  
9 accepted and nothing if the compromise is not accepted.

10 In sum, the court is persuaded that, under the totality of  
11 the factors, the compromise is fair and equitable.

12 IT IS ORDERED that the compromise is APPROVED.

13 Dated: July 8, 2014.

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UNITED STATES BANKRUPTCY JUDGE  
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**INSTRUCTIONS TO CLERK OF COURT  
SERVICE LIST**

The Clerk of Court is instructed to send the attached document, via the BNC, to the following parties:

J. Pedro Zarate  
8192 Creek Estates Way  
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Dana A. Suntag  
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